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No. 91-1202

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In The

Supreme Court of the United States

October Term, 1991

ANN RICHARDS, GOVERNOR OF TEXAS, et al.,

Petitioners,

versus

JOHN LINDSAY, HARRIS COUNTY JUDGE, et al.,

Respondents,

versus

LAWRENCE R. ALBERTI, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF AMICUS CURIAE FOR THE STATES OF LOUISIANA, ARKANSAS, IDAHO, INDIANA, MISSISSIPPI, NEW JERSEY, NEW MEXICO, NORTH CAROLINA, PENNSYLVANIA, SOUTH DAKOTA AND UTAH, IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI BY ANN RICHARDS, GOVERNOR OF TEXAS AND ALL OTHER PETITIONERS

RICHARD P. IEYOUB
Attorney General for the State of Louisiana
JACK YELVERTON
1st Assistant Attorney General

CLIFTON O. BINGHAM, JR.
Assistant Attorney General
Director, Litigation Division

HOUSTON C. GASCON, III
Assistant Attorney General
Chief, Civil Rights Section

*Counsel of Record

* JOSEPH ERWIN KOPSA
Assistant Attorney General
Appeals and Research Section

Department of Justice
Litigation Division
Post Office Box 94095
626 North 4th Street, 6th Floor
Baton Rouge, Louisiana
70804-9095
Telephone: (504) 342-8495

Attorneys for Amicus Curiae, State of Louisiana

(Additional Counsel Listed On Inside Cover.)

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

ATTORNEYS GENERAL OF COUNSEL

STATE OF ARKANSAS
WINSTON BRYANT
Attorney General
200 Tower Building
323 Center Street
Little Rock, Arkansas 72201
(501) 682-2007

STATE OF IDAHO
LARRY ECHOHAWK
Attorney General
State of Idaho
Statehouse
Boise, Idaho 83720
(208) 334-2400

STATE OF INDIANA
LINLEY E. PEARSON
Attorney General
State of Indiana
219 State House
Indianapolis, Indiana 46204
(317) 232-6315

STATE OF MISSISSIPPI
MIKE MOORE
Attorney General
State of Mississippi

ROBERT E. SANDERS
Assistant Attorney General
Post Office Box 220
Jackson, Mississippi 39205
(601) 359-3680

STATE OF NEW JERSEY
ROBERT J. DELTUFO
Attorney General of
New Jersey
Richard J. Hughes
Justice Complex
CN112
Trenton, New Jersey 08625
(609) 292-8550

STATE OF NEW MEXICO
HONORABLE TOM UDALL
Attorney General of New Mexico
Bataan Memorial Building
Galisteo Street
Post Office Drawer 1508
Santa Fe, New Mexico 87504-1508
(505) 827-6000

STATE OF NORTH CAROLINA
LACY H. THORNBURG
Attorney General of
North Carolina
Post Office Box 629
Raleigh, North Carolina 27602
(919) 733-7188

STATE OF PENNSYLVANIA
ERNEST D. PREATE, JR.
Attorney General of
Pennsylvania
16th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120
(717) 787-3391

STATE OF SOUTH DAKOTA
MARK BARNETT
Attorney General
State of South Dakota
500 East Capitol Avenue
Pierre, South Dakota 57501-5070
(605) 773-3215

STATE OF UTAH
PAUL VAN DAM
Attorney General of Utah
236 State Capitol
Salt Lake City, Utah 84114
(801) 538-1015

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INTEREST OF THE AMICI CURIAE

The Amici are all States. The various Attorneys General provide legal representation of their respective States. The particular legal questions presented in the Petition for Writ of Certiorari to This Court posit significant, unanswered questions of federalism; the Eleventh Amendment; abstention; liability for unconstitutional conditions in local jails and setting of constitutionally permissible caps on prisons and jails. The answers to the questions presented will have a nationwide impact on litigation requesting remedial injunctive relief from state officials for alleged unconstitutional conditions of confinement in local jails and the authority of lower federal courts to determine matters of political organization of the Several States and matters of fiscal and public policy.

The Amici States urge This Court to grant a Writ of Certiorari in this case and set the matter for argument.

SUMMARY OF REASONS FOR GRANTING THE WRIT

In the instant case, the Fifth Circuit violated the principles of federalism and Article III of the Constitution when it served as arbitrator of a dispute between the State of Texas and its local governmental entity (Harris County). The Fifth Circuit violated the Eleventh Amendment when it determined how the State of Texas should function under the laws of the State of Texas. The failure of the Fifth Circuit to abstain from answering unsettled questions of Texas state law violates the principles of "Our Federalism" contained in the Tenth and Eleventh

Amendments. The imposition of liability on Texas State Officials for violations of the Cruel and Unusual Punishment Clause of the Eighth Amendment by Harris County Officials over whom the Texas State Officials had no authority or control under state law, violates This Court's standard of culpability set out in *Wilson v. Seiter,* ___ U.S. ___, 111 S.Ct. 2321 (1991) and the requirement of causal connexity under 42 U.S.C. § 1983. When the Fifth Circuit set constitutional caps on the local jail based on the design capacity of Harris County Jail and previous consent decrees, and without waiting to see if operating the jail beyond design capacity caused jail officials to be deliberately indifferent to the significant human needs of the inmate class, it violated the legal standard set out under *Wilson v. Seiter,* and the principles set out in *Rufo v. Inmates of Suffolk County Jail,* ___ U.S. ___, 112 S. Ct. 748 (1991) The Fifth Circuit also violated the principles of "Our Federalism" when it used design capacity and Texas state law in setting population caps in the Harris County Jail.

Amici does not feel that the federal courts can sweep away the substance of state law, settled or unsettled, or create state law on the one hand, while on the other hand claiming to follow state law in finding a federal constitutional violation. In the instant case the Fifth Circuit swept away Texas state law in regard to imposing a remedy, created new Texas state law in terms of determining the identity of constitutional violators, and then claimed it relied on Texas state law in finding a violation of the Cruel and Unusual Punishment Clause of the Eighth Amendment. Amici asserts that, in this regard, the opinion of the Fifth Circuit was incorrect. This Court should correct the errors committed by the Fifth Circuit

so that these errors will not be repeated in the Fifth or any other Circuit. Clear guidance is needed on the issues raised in the Petition for Writ of Certiorari.

The opinion of the Fifth Circuit violates provisions of the Constitution as well as prior opinions of This Court. It also creates a conflict among the circuits. The issues raised in the Petition for Writ of Certiorari affect the jurisdiction of federal courts, our federal system of government, and every State. Therefore, there exists special and important reasons for granting the writ.

REASONS FOR GRANTING THE WRIT

I.

CERTIORARI SHOULD BE GRANTED TO RESOLVE AN IRRECONCILABLE CONFLICT BETWEEN THE CIRCUITS OVER (1) THE ROLE OF FEDERAL COURTS IN DECIDING DISPUTES BETWEEN DIFFERENT LEVELS OF STATE GOVERNMENT AND (2) THE SCOPE OF THE TENTH AND ELEVENTH AMENDMENTS.

Amici agree with the reasons for granting writ asserted in the petition.[1] These reasons will not be reasserted here.

In the instant case, the Fifth Circuit interjected itself into the center of a political dispute between the Legislature of Texas and the counties of Texas over which political entities within Texas should bear the costs associated

[1] See: Petition for Writ of Certiorari pp. 13-18.

with housing convicted felons.[2] The Fifth Circuit, in its opinion, resolved this political dispute to the advantage of Harris County. The federal court's authority to determine the existence of an Eighth Amendment violation exists; however, the Fifth Circuit had no authority to resolve the dispute between the State of Texas and its local governmental entities.

The Constitution does not dictate to the States the type of governmental structure which must be established by a State. This includes the relationship with its own local governmental entities.[3] Federal courts are simply not granted the authority under Article III of the Constitution "to adjudicate an internal dispute between a local governmental entity and the very State that created

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[2] The procedural history and facts of the instant case are outlined in the Petition for Writ of Certiorari at p. 4-13 and will not be repeated here. It is, however, important to note that Harris County Officials, who were the original defendants in the District Court, brought the Texas State Officials into federal court on a Third Party Complaint. The plaintiff inmate class did not sue the Texas State Officials on their original complaint in the District Court. *Id.* pp. 4-5.

[3] The Constitution only requires that the States have a republican form of government. Neither Congress nor the federal courts can dictate to the Several States how to organize their internal governmental structures either on a statewide basis or the relationship between a State and its local governmental entities. See: *Coyle v. Smith,* 221 U.S. 559 (1911). The Tenth Amendment reserves to the Several States the authority to structure themselves. See: *Coyle v. Smith,* 221 U.S. 559 (1911) and *Presley v. Etowah County Commissioners,* ___ U.S. ___, 112 S.Ct. 820, 832 (1992).

it." *Kelley v. Metropolitan Board of Education of Nashville and Davidson County, Tennessee,* 836 F.2d 986, 998 (6th Cir. 1987), *cert. denied,* 487 U.S. 1206 (1988). Since a local entity is a creation of a State, the local entity lacks standing to sue its creator State in federal court. A State cannot sue itself in federal court.[4] How a State organizes and structures itself is guaranteed to the Several States in the Tenth Amendment. Since a governmental entity's ability to organize and structure itself is an act of sovereign authority of that entity, a federal court is prohibited from adjudicating a dispute between a State and its local governmental entities. See: *Presley v. Etowah County Commissioners,* ___ U.S. ___, 112 S.Ct. 820, 832 (1992).[5]

This case involved the fiscal and taxing policies, public safety and local initiatives in regard to the criminal justice system in Texas. It is clear that a finding of liability and the issuing of injunctive relief did not require that

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[4] See: *Coleman v. Miller,* 307 U.S. 433, 441 (1939); *South Macomb Disposal Authority v. Township of Washington,* 790 F.2d 500 (6th Cir. 1986); *Town of Ball v. Rapides Parish Police Jury,* 756 F.2d 1049, 1051 N.1 (5th Cir. 1984) (and cases cited therein)

[5] Federal Courts are prohibited by the Eleventh Amendment from instructing state officials on how to comply with state law because that would "conflict" directly with the principles of federalism that underlie the Eleventh Amendment. *Pennhurst State School & Hospital v. Halderman,* 465 U.S. 89, 106 (1984). Allowing a federal court to dictate a State's relationship with its local governmental entities would cause an even greater conflict with the principles of federalism that underlie the Eleventh Amendment.

Texas State Officials be brought into the lower court.[6] Relief could have been obtained from the Harris County Officials, who under Texas state law, were the physical custodians of the plaintiff inmate class. The issuance of injunctive relief, which ordered the State of Texas to pay Harris County, clearly interfered with the governmental structure in Texas.

That portion of the injunction was based solely on the Fifth Circuit's interpretation of Texas state law and was not necessary in order to preserve a federal right. This Court has determined that federal courts should not interfere in the rightful independence of state government in the absence of vindicating a federally protected right. See: *Great Lakes Dredge & Dock Co. v. Huffman,* 319 U.S. 293, 298 (1943) In this case, the Fifth Circuit interfered in the fiscal relationship between the Legislature of Texas and the government of Harris County. The remedy could have been obtained solely

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[6] Officials of the State of Texas were brought into this suit by the county that it created in order to protect the fiscal interest of Harris County at the expense of the State of Texas. See: footnote 2, *supra.*

The officials of the State of Texas were sued in order to seek prospective injunctive relief. This type of suit is clearly a suit against the Texas State Officials in their official or representative capacities. See: *Will v. Michigan Department of State Police,* 491 U.S. 58, 71 N.10 (1989) As such the Harris County Officials third partied the State of Texas into this suit in federal court. See also: *Hafer v. Melo,* ___ U.S. ___, 112 S.Ct. 358, 361-362 (1991) and *Kentucky v. Graham,* 473 U.S. 159, 165-166 (1985)

from Harris County, leaving it to Harris County to seek redress of its fiscal problem with the Texas State Legislature or in a Texas State Court.

The Fifth Circuit ruling in the instant case and the case of *Benjamin v. Malcolm,* 803 F.2d 46 (2nd Cir. 1986) conflict directly with the holdings of This Court in *Pennhurst State School & Hospital v. Halderman* and the case of *Kelley v. Metropolitan Board of Education of Nashville and Davidson County, Tennessee.* There exists a conflict among the circuits and a conflict with an opinion of This Court which should be resolved through the granting of this writ.

The Fifth Circuit in its opinion resolved a dispute between Harris County and the State of Texas. See: *Alberti v. Sheriff of Harris County,* 937 F.2d 984, 993-998 (5th Cir. 1991) This violates the Tenth Amendment and Eleventh Amendment of the Constitution, exceeds a federal court's authority under Article III of the Constitution, and causes a conflict among the Circuit Courts. The resolution of this issue by This Court is of great importance to every State and local government in this country. For these reasons the writ should be granted.

II.

CERTIORARI SHOULD BE GRANTED BECAUSE OF THE LOWER COURT'S CLEARLY ERRONEOUS AND ILL REASONED RULING ON ABSTENTION

Amici agree with the Petitioner's reasons for granting writ on the issue of abstention.[7] These reasons

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[7] See: Petition for Writ of Certiorari pp. 18-23.

will not be reasserted here. Amici assert that whether the doctrine is abstention, Article III jurisdiction, or Our Federalism under the Tenth or Eleventh Amendment, the Fifth Circuit, like all federal courts, neither has the authority nor background to adjudicate questions of state law.

It is clear in this case that the state law issue of whether the State of Texas owed money to Harris County for housing transfer eligible inmates was an unsettled question of Texas state law.[8] Article III of the Constitution permits federal courts to adjudicate only certain claims; determining questions of state law is not one of the type of claims listed in Article III.[9] The Tenth Amendment leaves to the Several States the sole authority to adjudicate such state law claims in their state courts. The Eleventh Amendment prohibits federal courts from adjudicating issues of state law solely on state law grounds. See: *Pennhurst State School & Hospital v. Halderman*, 465 U.S. at 106.

It is clear that the Fifth Circuit should have "abstained" from adjudicating the unsettled question of Texas State law, stayed the proceedings in federal court on that issue and certified the question to the state court

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[8] See: Petition for Writ of Certiorari pp. 6-11.

[9] This claim is not based on diversity but rather on a federal claim. While matters involving state law might arise in a diversity case, only the constitutionality of a state law can be considered as arising under a federal claim. Here the issue was not the constitutionality of the state law in question but rather an actual adjudication of what that state law means.

system in Texas. See: *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 9-22 (1987) Since the issue at stake is purely a matter of state law, and the federal question could have been resolved without answering the state law question, the state law issue should have been dismissed along with the state defendants. See: *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817-820 (1976) *New Orleans Public Service, Inc. v. Counsel of City of New Orleans*, 491 U.S. 350, 360-362 (1989) and *Mississippi Power & Light Co. v. Mississippi ex rel Moore*, 487 U.S. 354, 108 S.Ct. 2428 (1988)

The reasons why federal courts should not adjudicate state law claims are grounded both in the Constitution and practicality. This Court has pointed out that federal judges are not necessarily schooled or learned in state law. See: *Pennhurst State School & Hospital v. Halderman*, 465 U.S. at 123 N.32.

In this case, the Fifth Circuit based its analysis of Texas state law on an opinion by a Texas State District Judge located in Harris County. *Alberti v. Sheriff of Harris County*, 937 F.2d at 997. This state court opinion, however, was never final nor was it reviewed by any higher court in Texas. In fact this state court opinion has been vacated.[10]

Because of the above misinterpretation of unsettled Texas state law by the Fifth Circuit, this case is a textbook example of the practical reason why federal courts should not adjudicate purely state law claims. A federal court should either; (1) "abstain" from adjudicating these types

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[10] See: Petition for Writ of Certiorari pp. 9-10.

of claims; (2) certify them to the appropriate state court system; or (3) dismiss the claims.

This Court should grant writs on these questions because it is an important issue of nationwide significance and has not received uniform application throughout the federal court system.

III.

THIS COURT SHOULD GRANT CERTIORARI TO DETERMINE IF, IN THE CONTEXT OF UNSETTLED STATE LAW AND FEDERAL COURT ORDERS IN THE STATE PRISON CONDITIONS CASE, STATE OFFICIALS WITH NO SUPERVISORY AUTHORITY OVER LOCAL JAILS ARE LIABLE UNDER *WILSON V. SEITER* FOR CONDITIONS OF CONFINEMENT IN A LOCAL JAIL BECAUSE THEY (1) DID NOT CONSTRUCT OR ACQUIRE MORE BEDS THAN THE LEGISLATURE APPROPRIATED FUNDING FOR AND (2) DID NOT EXPEDITE THE RELEASE OF MORE CONVICTED FELONS.

Amici agree with the Petitioners' reasons for granting writ on this question.[11] These reasons will not be reasserted here. Amici assert, however, that contained within the question presented for review is the basic issue of who can be held liable for violating the Constitution under 42 U.S.C. § 1983.[12]

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[11] See: Petition for Writ of Certiorari pp. 23-27.

[12] Petitioners have framed this question in terms of liability under *Wilson v. Seiter*. See Petition for Writ of Certiorari

(Continued on following page)

Under the clear meaning of § 1983 only a "person" who violates another's constitutional rights can be held liable for the violation of a constitutional right. What is equally clear is that a remedy for violating another's Constitutional rights can be issued only against the "person" who violated that right. See: 42 U.S.C. § 1983 and See: *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 818-821 (1985) (Per Justice Rehnquist with the Chief Justice and three Justices concurring in judgment).

In the instant case, a remedy for violating the constitutional rights of the plaintiff inmate class was issued against the State Defendants without determining if each of the State Defendants were "persons" liable for the constitutional violation. In short, did the Texas State

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p. 1 Question Presented Number 4. However, supervisory liability is also an issue under 42 U.S.C. § 1983. See: *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 818-821 (1985) (Per Justice Rehnquist with the Chief Justice and three Justices concurring in judgment) As stated by This Court, questions of the meaning of § 1983 are jurisdictional in nature and can be reviewed by This Court regardless of their being raised by the parties. *Will v. Michigan Department of State Police*, 491 U.S. 58, 63 N.4 (1989)

A federal court's instruction to State Officials on how to comply with state law is barred by the Eleventh Amendment. *Pennhurst State School & Hospital v. Halderman*, 465 U.S. at 196. Pendent Jurisdiction cannot be used to bypass what the Eleventh Amendment specifically prohibits. *Id.*, 465 U.S. at 121-122. Therefore, This Court has already determined that a legal dispute between state officials and county officials cannot be heard as a pendent State law claim.

Officials have responsibility for the unconstitutional conditions of confinement in Harris County's jail?

The "actor" is the "person" liable for violations of constitutional rights. The "actor" who is liable is the "person" against whom the remedy can be imposed under § 1983. A plurality of This Court has indicated that the "actor" in cases like the instant one, is determined by looking at state law. *City of St. Louis v. Praprotnick,* 485 U.S. 112, 123-129 (1988) (Per Justice O'Connor with the Chief Justice and two Justices concurring)

Texas state law made the officials of Harris County the physical custodians of the plaintiff inmate class and, therefore responsible for the care and treatment of the plaintiff inmate class while housed in the Harris County Jail. Tex. Code Crim. Proc. Art. 104.002 (Vernon Supp. 1992). Under Texas state law, the officials of Harris County are the "actors" who are responsible for the conditions of confinement at the Harris County Jail, regardless of whom is housed within that jail.[13] Therefore, the "person" who is liable and against whom a remedy can be imposed are the officials of Harris County and not the Texas State Officials.

However, the Fifth Circuit ignored the clear dictates of Texas state law and determined that a remedy could be imposed against the State Defendants and the County

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[13] See: Petition for Writ of Certiorari pp. 6-11.

Defendants.[14] *Alberti v. Sheriff of Harris County,* 937 F.2d at 993-998. A plurality of This Court has determined that this method is improper. *City of St. Louis v. Praprotnick,* 485 U.S. at 134 N.1, This Court, however, has never determined what method must be used.

In determining who is the "actor" for purposes of imposing liability under § 1983, state law must control. Under § 1983 only the "actor" who is the constitutional violator can have a remedy imposed against him. This concept is neither new nor radical. It is a basic principle of fairness that only wrongdoers can be found liable in court and have remedies imposed on them.

The question of law presented here is: How should a federal court determine who is the "actor" for purposes of imposing liability on and a remedy against a "person" under 42 U.S.C. § 1983? This is a threshold and plenary question under § 1983. This Court should grant writ in this case to resolve this important legal question.

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[14] Louisiana Courts have determined that local jail officials – Parish Sheriff – is the "actor" who is liable for the conditions of confinement at parish jails under Louisiana law and not Louisiana State Officials. La. Rev. Stat. Ann. 15:824, See *Langley v. City of Monore,* 582 So.2d 367, 368 (La. Appl 2nd 1991), *Cooley v. State of Louisiana,* 533 So.2d 124, 125 (La. App. 4th Cir. 1988) and *Amiss v. Dumas,* 411 So.2d 1137 (La. App. 1st Cir. 1982) The Louisiana Legislature has for sometime mandated that the Parish Officials receive payment per day per head for each Louisiana State prisoner that is held in parish jail. La. Rev. Stat. Ann. 15:824B

IV.

CERTIORARI SHOULD BE GRANTED TO REVERSE AN ILL REASONED AND CLEARLY ERRONEOUS RULING OF FEDERAL CONSTITUTIONAL LAW ON CAPACITY LIMITATIONS AND TO PROVIDE GUIDANCE TO THE LOWER COURTS ON THE APPROPRIATE APPROACH TO TAKE IN IMPOSING CAPS ON LOCAL JAILS OR PRISONS.

Amici concur in the argument of the Petitioner.[15] These reasons will not be reasserted here. Amici have no additional reasons why This Court should grant the writ on this question.

CONCLUSION

A writ of certiorari should be granted and this case set for oral argument.

The questions presented for review involve unanswered threshold issues of jurisdiction under Article III, the Tenth Amendment and the Eleventh Amendment which have remained unanswered by This Court. The questions presented for review involve answered issues of abstention and/or certification of state law claims. The questions presented for review reflect conflicts among the Courts of Appeals. The results reached by the Fifth Circuit conflict directly with holdings of This Court. Additionally, the proper test for determining the constitutional violator under § 1983 is of nationwide importance.

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[15] See: Petition for Writ of Certiorari pp. 27-30.

The States Amici believe that the questions presented for review in the Petition for Writ of Certiorari are of grave importance to all States. The States Amici feel that This Court should answer the questions presented for review in the Petition for Writ of Certiorari.

Respectfully submitted by:

RICHARD P. IEYOUB
Attorney General for the State of Louisiana

JACK YELVERTON
1st Assistant Attorney General

CLIFTON O. BINGHAM, Jr.
Assistant Attorney General
Director, Litigation Division

HOUSTON C. GASCON, III
Assistant Attorney General
Chief, Civil Rights Section

*Counsel of Record

*JOSEPH ERWIN KOPSA
Assistant Attorney General
Appeals and Research Section

Department of Justice
Litigation Division
Post Office Box 94095
626 North 4th Street,
6th Floor
Baton Rouge, Louisiana
70804-9095
Telephone: (504) 342-8495

Attorneys for Amicus Curiae, State of Louisiana

(Additional Counsel Listed on Inside Cover)